

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Patent No. 7,138,501

Confirmation No. 5654

Patentee: Ruben et al.

Issued: November 21, 2006

Docket No.: PF523P1

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
(37 C.F.R. § 1.705(d))**

1. This request for reconsideration of the patent term adjustment for U.S. Patent No. 7,138,501 is being filed with the following documents:

(a) "PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR (37 C.F.R. § 1.181(a)(3)) AND/OR PETITION TO SUSPEND 37 C.F.R. § 1.705(d) (37 C.F.R. § 1.183)" and

(b) "MEMORANDUM IN SUPPORT OF PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR (37 C.F.R. § 1.181(a)(3)) AND/OR OF PETITION TO SUSPEND 37 C.F.R. § 1.705(d) (37 C.F.R. § 1.183)."

2. Patentee submits herewith a "STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT."

3. The above identified patent (37 C.F.R. § 1.705(b)(2)(iii)):

☒ is not subject to a terminal disclaimer

☐ is subject to a terminal disclaimer, and the expiration date specified in the terminal disclaimer is _____ (Date).

4. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in 37 C.F.R. § 1.704 (37 C.F.R. § 1.705(b)(2)(iv)):

- ☐ there were none (37 C.F.R. § 1.705(b)(2)(iv)(B)).
- ☒ these were as follows (37 C.F.R. § 1.705(b)(2)(iv)(A)):

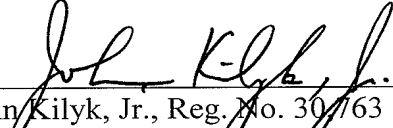
- (a) a delay of 151 days for submission of an information disclosure statement on December 5, 2003, after a reply had been filed on July 7, 2003 (37 C.F.R. § 1.704(c)(8)),
- (b) a delay of 35 days for submission of a clean copy of the substitute specification on January 18, 2005, after a reply had been filed on December 14, 2005 (37 C.F.R. § 1.704(b)), and
- (c) a delay of 54 days for submission of a supplemental after-final reply on September 27, 2005, after an after-final reply had been filed on August 5, 2005 (37 C.F.R. § 1.704(b)).

5. The fee set forth in 37 C.F.R. § 1.18(e) (i.e., \$200.00), required by 37 C.F.R. § 1.705(b)(1), is paid as follows:

☒ Authorization was made to charge the amount of \$200.00 to Deposit Account No. 12-1216 in the accompanying "PETITION TO INVOKE THE SUPERVISORY AUTHORITY OF THE DIRECTOR (37 C.F.R. § 1.181(a)(3)) AND/OR PETITION TO SUSPEND 37 C.F.R. § 1.705(d) (37 C.F.R. § 1.183)."

☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

Respectfully submitted,



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Date: March 5, 2010

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STATEMENT OF THE CORRECT PATENT TERM ADJUSTMENT

1. This statement is being submitted in support of the “REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT (37 C.F.R. § 1.705(d))” to which this statement is attached.

2. The patent term adjustment shown on the face of U.S. Patent No. 7,138,501 is 754 days. In accordance with 37 C.F.R. § 1.705(b)(2)(i), Patentee respectfully states that the correct patent term adjustment under 37 C.F.R. § 1.702 is 1135 days.

3. In accordance with 37 C.F.R. § 1.705(b)(2)(ii), Patentee sets forth below the basis on which Patentee seeks correction of the patent term adjustment:

Adjustment under 37 C.F.R. § 1.702(a)(1)

Adjustment is sought for the following period of delay by the U.S. Patent and Trademark Office: from fourteen months from the day after the date on which the application was filed (i.e., from August 16, 2002) and ending on the date of mailing of an action under 35 U.S.C. § 132 (i.e., until May 7, 2003) (37 C.F.R. § 1.702(a)(1)).

Adjustment to be made for the foregoing period of delay by the U.S. Patent and Trademark Office: 265 days are to be added to the patent term adjustment for the above-identified patent (37 C.F.R. § 1.703(f)).

Basis for the indicated adjustment: The U.S. Patent and Trademark Office failed to include in the patent term adjustment an additional 265 days as required by 37 C.F.R. § 1.702(b).

Adjustment under 37 C.F.R. § 1.702(a)(2)

Adjustment is sought for the following period of delay by the U.S. Patent and Trademark Office: from four months from the day after the date on which a response to the restriction requirement was filed (i.e., from November 8, 2003) and ending on the date of mailing of an action under 35 U.S.C. § 132 (i.e., until September 14, 2004) (37 C.F.R. § 1.702(a)(2)). Since this period of delay overlaps with delay under 37 C.F.R. § 1.702(b) which began on June 16, 2004, the total period of delay under 37 C.F.R. § 1.702(a)(2) is 221 days (37 C.F.R. § 1.703(f)).

Adjustment to be made for the foregoing period of delay by the U.S. Patent and Trademark Office: 221 days are to be added to the patent term adjustment for the above-identified patent (37 C.F.R. § 1.703(f)).

Basis for the indicated adjustment: The U.S. Patent and Trademark Office failed to include in the patent term adjustment an additional 221 days required by 37 C.F.R. § 1.702(b).

Total Adjustment under 37 C.F.R. §§ 1.702(a)(1) and 1.702(a)(2)

The total adjustment under 37 C.F.R. §§ 1.702(a)(1) and 1.702(a)(2) is 486 days (i.e., 265 days + 221 days).

Adjustment under 37 C.F.R. § 1.702(b)

Adjustment is sought for the following period of delay by the U.S. Patent and Trademark Office: from three years from the day after the date on which the application was filed (i.e., from June 16, 2004) and ending on the date of issuance under 35 U.S.C. § 132 (i.e., until November 21, 2006) (37 C.F.R. § 1.702(b)).

Adjustment to be made for the foregoing period of delay by the U.S. Patent and Trademark Office: 889 days are to be added to the patent term adjustment for the above-identified patent (37 C.F.R. § 1.703(f)).

Basis for the indicated adjustment: The U.S. Patent and Trademark Office failed to include in the patent term adjustment an additional 889 days required by 37 C.F.R. § 1.702(b).

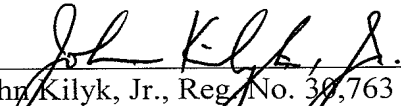
Adjustment under 37 C.F.R. § 1.704(a)

Applicant delay amounts to 240 days (37 C.F.R. § 1.704(a)) based on the following periods of delay: (a) a delay of 151 days from the filing of a reply to an office action on July 7, 2003, to the submission of an information disclosure statement on December 5, 2003 (37 C.F.R. § 1.704(c)(8)), (b) a delay of 35 days from the filing of a reply to an office action on December 14, 2004, to the submission of a clean copy of the substitute specification on January 18, 2005 (37 C.F.R. § 1.704(b)), and (c) a delay of 54 days from the filing of an after-final reply on August 5, 2005, to the submission of a supplemental after-final reply on September 27, 2005 (37 C.F.R. § 1.704(b)).

Correct Patent Term Adjustment (37 C.F.R. § 1.703(f))

Thus, the correct patent term adjustment for U.S. Patent No. 7,138,501 is 1135 days (i.e., the total of 486 days plus 889 days minus 240 days).

Respectfully submitted,



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